# In the Supreme Court of the United States

OCTOBER TERM, 1972

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No. 71-1596

COMMONWEALTH OF PENNSYLVANIA, ET AL., PETITIONERS

*v.*

UNITED STATES OF AMERICA, ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINIONS BELOW

The opinions of the court of appeals (Pet. App. A, 5a-8a) are not yet reported. The orders of the district court (Pet. App. A, 1a-4a) are not yet reported.

### JURISDICTION

The judgments of the court of appeals were entered on March 10, 1972. The petition for a writ of certiorari was filed on June 8, 1972. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Whether a district court may, in the exercise of its bankruptcy jurisdiction, enjoin review in another forum of Interstate Commerce Commission orders relating to line abandonment applications filed by the debtor railroad company.

2. Whether a district court may, in the exercise of its bankruptcy jurisdiction, order the debtor railroad company to suspend operations on certain lines.

## STATUTORY PROVISIONS INVOLVED

Section 1(18)-(20) of the Interstate Commerce Act, 49 U.S.C. 1 (18)-(20), Section 77(o) of the Bankruptcy Act, 11 U.S.C. 205(o), and Sections 1398 (a) and 2325 of the Judicial Code, 28 U.S.C. 1398 (a) and 2325, are set forth at Pet. App. B, 1b-4b.

## STATEMENT

In March 1967, the Central Railroad Company of New Jersey ("C.N.J.") filed a petition for reorganization in the United States District Court for the District of New Jersey. From 1958 through 1971, C.N.J. had lost more than $100 million. The present trustee was appointed in January 1971. The railroad was at that time facing a severe liquidity crisis which threatened to cause the termination of all its operations.

The trustee dealt with this crisis by obtaining a $2,000,000 grant from the State of New Jersey and permission from the court, the United States Depart-

ment of Transportation, and the Interstate Commerce Commission, to issue up to $2,500,000 in federally-guaranteed trustee certificates under the Emergency Rail Services Act of 1970, Pub. L. 91-663, 84 Stat. 1975.[1] The trustee also developed a program calling for passenger and freight rate increases, negotiation of passenger contracts with the State of New Jersey, disposition or utilization of unproductive real estate, discontinuance of unprofitable coal-dock and marine lighterage activities, and the abandonment of all C.N.J. operations in Pennsylvania. The latter operations, which were unprofitable, were to be turned over to the Lehigh Valley Railroad, which operated parallel lines in Pennsylvania. Effectuation of this program would reduce C.N.J. operations to an area comprising six heavily populated and heavily industrialized northern New Jersey counties.

In May 1971, as a step in the implementation of this program, the trustee applied to the reorganization court for permission under Section 77(o) of the Bankruptcy Act, 11 U.S.C. 205(o), to file an application with the Interstate Commerce Commission for approval and authorization of abandonment of its lines and operations in Pennsylvania.[2] After notice

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[1] Only $1,500,000 of these certificates have actually been issued. The court in Order No. 445 authorized the trustee to issue the extra $1,000,000 in certificates in accordance with the terms of that Order.

[2] Abandonment of a few unprofitable branch lines in New Jersey was also sought.

and hearing, the court granted the trustee's request, and on May 25, 1971, he filed his application with the Commission. The Commission divided the application into 29 parts, representing different segments of C.N.J. lines, and on August 20, 1971, summarily approved the abandonment of ten of these segments, five in Pennsylvania and five in New Jersey, effective September 28, 1971.

The Commonwealth of Pennsylvania, which had appeared in the Commission proceedings, petitioned for reconsideration of the Commission's order.[3] On September 28, 1971, the Commission stayed its order pending its decision on the Commonwealth's petition for reconsideration. The Commission then conducted extensive hearings on the C.N.J. abandonment application. These hearings concluded December 14, 1971. On December 15, 1971, the Commission denied the petition for reconsideration, and its order approving the abandonments became effective January 4, 1972.

On December 20, 1971, the reorganization court issued Order No. 445, directing the trustee to suspend all C.N.J. operations in Pennsylvania by April 1, 1972, pending the Commission's final decision on the abandonment application (including all parts thereof), and enjoining all parties from instituting or maintaining in any other court any action affecting

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[3] Together with several labor organizations, the Commonwealth also filed suit under the Urgent Deficiencies Act, 28 U.S.C. 2321-2325, in the United States District Court for the Middle District of Pennsylvania, to set aside the Commission's order. That suit has in effect been stayed pending the disposition of this case.

C.N.J. operations in Pennsylvania. On January 11, 1972, the court issued Order No. 451, authorizing the trustee to abandon the ten segments covered by the Commission's order of August 24, 1971. The court refused to stay these orders pending appeal. Petitioners then prosecuted expedited appeals.

The district court's orders were affirmed *per curiam* by the court of appeals, which denied petitioners' applications for stay. Petitioners' applications for stay submitted to Mr. Justice Brennan, and by him referred to Mr. Justice Stewart, were denied on March 27, 1972.[4]

## ARGUMENT

The district court's orders were a proper exercise of its bankruptcy jurisdiction. The petition presents no question warranting further review.

1. Contrary to petitioners' contention (Pet. 7-10), a reorganization court has jurisdiction to review Interstate Commerce Commission orders deciding abandonment applications filed by the trustee, and the court, to protect its review jurisdiction, may enjoin the parties from seeking review of such orders in another forum.[5] See *New Haven Inclusion Cases*, 399

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[4] In an order entered May 26, 1972, the Interstate Commerce Commission approved C.N.J.'s application to abandon all its lines and operations in Pennsylvania. This order is not yet effective.

[5] Petitioners urge (Pet. 9) that the C.N.J. abandonment application here should be considered as materially unconnected with the reorganization proceeding, contending that C.N.J.'s abandonment application is no different from the

U.S. 392; *Chicago & North Western Ry. Co.* v. *United States*, 52 F. Supp. 65 (N.D. Ill.), affirmed *per curiam*, 320 U.S. 718. To permit appeal from the Commission's orders to be taken to a district court unfamiliar with the reorganization would result in confusion, unnecessary expense, and excessive delay, the very evils which Congress has sought to eliminate in railroad reorganizations. As this Court noted in *New Haven Inclusion Cases, supra*, at 421:

> * * * the Commission was required to certify its proposal to the court as a prerequisite to judicial approval. § 77(d), 11 U.S.C. § 205(d). Injunctive intervention by the three-judge court would thus have disrupted an essential statutory phase of the New Haven reorganization.

Here, as in *New Haven Inclusion Cases*, the variety of issues and parties raises the possibility of multiple litigation in several district courts unless primacy is accorded a single forum. See 399 U.S., at 418-419 n. 50. See also *In re Penn Central Transportation Co.*, 329 F. Supp. 387, 390 (E.D. Pa.), affirmed, 446 F.2d 1109 (C.A. 3). Moreover, confining review to the reorganization court should not affect the outcome of the litigation: since Section 77(o) of the Bankruptcy Act incorporates Section 1(18) of the Interstate Commerce Act, the question of public convenience and

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abandonment application of a railroad not in reorganization. The reorganization proceedings and the abandonment are, however, intimately connected: the abandonment application originated in the reorganization court (see p. 3, *supra*), and the reorganization court must act on the Commission's final order pursuant to Section 77(o) of the Bankruptcy Act.

necessity may be reviewed by the reorganization court, and such a court would exercise the same scope of review as a three-judge court.

The power of a bankruptcy court to enjoin parties from litigation which would hamper exercise of its statutory responsibility or would otherwise interfere with exercise of its jurisdiction over the debtor is well established. 11 U.S.C. 11(a)(15). See *Continental Illinois National Bank* v. *Chicago, R.I. & Pac. R. Co.*, 294 U.S. 648, 675. See generally, 1 Collier, *Bankruptcy*, para. 2.60-2.62. Any delay engendered here by intrusion into the review process by a three-judge court unfamiliar with the C.N.J. reorganization might seriously hamper the reorganization court in exercising its statutory responsibility. The district court was therefore justified in restraining the litigants from proceeding in some other forum.

2. Petitioners also contend (Pet. 10-12) that a reorganization court lacks jurisdiction to order a temporary suspension of a portion of the railroad debtor's operations. However, a reorganization court may even order cessation of all operations, where further operations of the debtor at a loss would amount to a taking of property without compensation. *New Haven Inclusion Cases*, 399 U.S. 392, 490-492; *New York, N.H. & H. R. Co., Bondholders' Committee* v. *United States*, 289 F. Supp. 418 (S.D. N.Y.); *In re New York, N.H. & H. R. Co.*, 289 F. Supp. 451 (D. Conn.). In this case, the Commission has noted, in its order of May 26, 1972 (see note 4, *supra*), that:

> The overriding factor with which we are faced, is that since 1967, C.N.J. has been Debtor in Reorganization under the Bankruptcy Act before the United States District Court for the District of New Jersey. Its position has continuously deteriorated, as have other railroad[s] serving the New York Metropolitan area. C.N.J. now may be considered *in extremis*. During and since 1970, its losses have amounted to more than $1 million per month. Under the circumstances, some form of drastic remedial action became imperative [Opinion of the Commission, p. 105].

Thus, the reorganization court was within its authority in ordering a partial shutdown of C.N.J. operations where continuance of such operations for public convenience would involve an uncompensated taking of property.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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